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Federal Communications Commission

WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Advanced Television Systems and Their)
Impact upon the Existing Television)
Broadcast Service)

MM Docket No. 87-268

To: The Commission

CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

Sinclair Broadcast Group, Inc. ("Sinclair"), by its attorneys, hereby submits its Consolidated Reply to Oppositions to Sinclair's Petition for Reconsideration ("Petition") of the Commission's Sixth Report and Order ("Allotment Order"), filed on June 13, 1997 in the above-captioned proceeding. Specifically, Sinclair responds herein to oppositions filed by the Association for Maximum Service Television, Inc., the Broadcasters Caucus and Other Broadcasters (collectively, "MSTV"), Pulitzer Broadcasting Company ("Pulitzer"), Media Access Project ("MAP"), and the Association of America's Public Television Stations and the Public Broadcasting Service ("APTS").

Background

In its Petition, Sinclair, a group owner whose interest in this proceeding is a matter of record, argued that the Commission's decision to replicate broadcasters' NTSC Grade B contours will create a serious and unfair competitive disparity between analog VHF stations relocating to the UHF digital band ("VHF/UHF stations") and analog UHF stations operating on the UHF

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digital band (“UHF/UHF” stations). Due to the Commission’s Grade B replication policy, VHF/UHF stations are to receive robust allotments of digital power, while UHF/UHF stations receive power levels that in major markets are approximately one-twentieth those awarded to their VHF/UHF counterparts. As a result, Sinclair pointed out, UHF/UHF stations will be unable to provide service of comparable quality to consumers utilizing television receivers with simple indoor antennas, even within their “**core business areas.**” These core areas are where the major population centers in stations’ markets are located, where stations sell the majority of their advertising time, and where stations focus their public interest efforts.

The Commission’s apparent conclusion that UHF/UHF stations’ power allotments are sufficient for high-quality service within these core areas is the result of certain unrealistic “planning factors,” particularly those relating to receiver sensitivity and the use of outdoor receiving antennas. Specifically, the Commission assumes a DTV UHF receiver noise figure of just 7 dB, making it clear that the Commission believes either that most television consumers will purchase either an outdoor DTV receiving antenna, or that television manufacturers will produce a DTV receiver much more sensitive than any on the market today. The Commission presents no evidence to support these unreasonable assumptions. Rather, it is likely that a substantial number -- if not a majority -- of consumers will attempt to view DTV on sets with simple indoor antennas of questionable performance, a factor made even more significant by the fact that many of these consumers’ residences will be structures that are difficult to penetrate. Even if such viewers could possibly regain adequate reception by adjusting the position of their set-top antennas, this required adjustment would still place UHF/UHF stations at a significant competitive disadvantage vis a vis their VHF/UHF counterparts, whose powerful signals would always produce a reliable picture. As a solution to this problem, Sinclair argued in its Petition

that the Commission should adjust its DTV Table of Allotments in whatever way necessary to replicate the current ease of reception within stations' core business areas -- for practical regulatory purposes, within stations' current NTSC **Grade A** contours -- even if these modifications preclude the replication of all stations' Grade B contours.

In the event the Commission maintains its current Grade B contour replication policy and initial DTV allotment table, Sinclair's Petition argued that the Commission should at least modify its coverage maximization procedures. The Commission should relax its standard for determining whether a station is permitted to increase its power, weighing interference to another broadcaster only where such interference occurs inside the affected broadcaster's Grade A contour. If the Commission maintains its current Grade B standard, however, it should at least modify its definition of "additional interference" in areas falling outside stations' Grade A contours by moving to a F(50,50) based D/U ratio in those areas.

Discussion

I. The Commission Should Reject the Arguments of Those Parties Who Oppose Modification of the Initial DTV Allotment Table

MSTV and Pulitzer oppose Sinclair's position that the Commission should reduce the power disparity between VHF/UHF and UHF/UHF broadcasters by modifying the initial DTV allotment table. MAP seemingly downplays the significance of the power disparity by pointing to the effects of cable carriage. For the following reasons, the Commission should reject the arguments of these parties and proceed expeditiously with the necessary modifications.

A. The "Wide-Area Service" Policies Cited by MSTV Do Not Support Adherence to Grade B Replication

MSTV argues that the Commission should avoid any major revision of the DTV allotment table. In support of this position, MSTV asserts that the Commission's Grade B

replication policy is consistent with the Commission's historic commitment to "wide-area service," described by MSTV as "a bedrock value." MSTV Opposition at 4. Sinclair does not dispute that the Commission has in the past fostered wide-area coverage. However, the Commission's 1952 order establishing wide-area television service involved an entirely different set of cost/benefit factors, and, as a result, this decision does not support Grade B replication in the digital context.^{1/}

As MSTV points out, the primary mechanism for achieving wide-area service is the Commission's minimum-spacing policy. MSTV Opposition at 5-6. What is sacrificed through minimum-spacing is altogether different, however, from what would be sacrificed through Grade B replication. Specifically, the Commission's minimum-spacing rules merely decreased the overall number of stations that could be squeezed into a given geographic area, and did not harm any existing stations. In contrast, the Commission's Grade B replication policy would greatly reduce the effective service coverage of an existing class of stations -- UHF/UHF broadcasters -- within those stations' core business areas. Additionally, under Grade B replication, an entire category of consumers -- those using simple indoor antennas -- would likely lose access to a significant volume of broadcast television service. The Commission's decision to accept the cost/benefit trade-off associated with minimum-spacing is irrelevant, therefore, to its decision in the Grade B replication context.^{2/}

^{1/} Sixth Report and Order, 41 F.C.C. 148 (1952).

^{2/} In its 1952 allotment order, the Commission emphasized that the breadth of stations' coverage should be consistent with "an efficient utilization of the spectrum and the satisfaction of the needs of the various cities and communities of the United States." 41 FCC Rcd at 188. Clearly, in rendering UHF/UHF service inaccessible to a significant proportion of urban residents, Grade B replication is not consistent with the "satisfaction of the needs" of the affected cities and communities of license.

Moreover, in applying this minimum-spacing policy, the Commission's reasoning has at times weighed **against** Grade B replication. Specifically, in limiting the number of short-spaced and lower power VHF stations, the Commission has expressed concern that the allotment of such stations would interfere with or degrade service from other existing stations, and would also reduce opportunities for successful operation of UHF stations already on-the-air.^{3/} In the current scenario, replicating VHF/UHF stations' "over the horizon" Grade B coverage would have **exactly the same effect** as such short-spacing. Grade B replication would diminish the ease of reception of UHF/UHF stations' programming, even in those stations' core areas, and would threaten the economic viability of these UHF/UHF stations. The Commission should act as it did in the short-spacing context, and abandon Grade B replication.

Clearly, MSTV's suspect interpretation of these earlier Commission policies is shaped by the economic self-interest of various influential VHF/UHF group owners -- these broadcasters will benefit greatly from maximum DTV coverage and ease of reception of their DTV signals.^{4/} In order to make this self-interest less discernible -- and to conceal the weakness of its analysis -- MSTV never addresses Sinclair's contention that, under the current DTV allotment table, many

^{3/} Rules and Regulations Governing Television Broadcast Stations, 13 RR 1571, 1575 (1956).

^{4/} As stated *supra* at 2-3, VHF/UHF stations' substantial power allotments will enable consumers using simple indoor antennas to receive these stations' programming without any difficulty. This ease of reception will give these stations an enormous competitive advantage over UHF/UHF stations. This advantage is clearly counter to the Commission's policy in the analog environment, which promoted UHF-VHF competitive parity within stations' core market areas. Specifically, in the analog context, to compensate for superior VHF propagation, the Commission's 1952 TV allotment order established a UHF power maximum of 1000 kw, compared to just 316 kw for VHF channels 7-13 and 100 kw for VHF channels 2-6. 41 F.C.C. at 192. The Commission should now make clear that competitive parity in stations' core market areas is also a top priority in the digital environment, and should proceed to make the changes necessary to ensure such parity.

consumers utilizing simple indoor antennas will be unable to receive service from UHF/UHF broadcasters, even in those stations' core business areas. Of course, had MSTV acknowledged the likelihood of this result, it would have been forced to acknowledge also that the Grade B replication debate pits the interests of VHF/UHF stations and viewers in the fringe Grade B areas against the interests of UHF/UHF stations and those viewers in stations' core business areas utilizing simple indoor antennas. Having recognized this reality, MSTV would have had no choice but to argue that the interests of viewers in Grade B fringe areas outweigh the interests of Grade A core area viewers, a position clearly counter to established Commission policy.^{5/}

MSTV's avoidance of this UHF/UHF issue is perhaps most glaring in its discussion of the Commission's historic lack of tolerance for policies and actions that result in service losses.^{6/} Here, MSTV's failure to acknowledge that Grade B replication will diminish UHF/UHF service to stations' core business areas leaves its analysis blatantly incomplete. Neither MSTV nor the Commission can any longer ignore the reality that service losses in stations' core market areas

^{5/} The Commission's emphasis on service to the core market area is illustrated most clearly by the Commission's city-grade coverage rule, which requires a television station to cover its entire principal community with at least a city-grade signal. 47 C.F.R. § 73.685. With this rule, the Commission seeks to ensure that a broadcaster provide the nucleus of its business area with quality service. While economic considerations may demand additional coverage, there is no formal **regulatory** commitment to such service in areas on the fringes of a station's Grade B contour.

^{6/} As stated above, in defending VHF/UHF stations' massive power allotments, MSTV emphasizes the importance of avoiding service losses in the periphery of these stations' Grade B contours. MSTV Opposition at 8. Given the apparent primacy of this goal, if the Commission rejects the proposals in Sinclair's Petition, the Commission should at least require VHF/UHF stations to utilize shaped beam antennas to focus the majority of their transmitted DTV power at the Grade B periphery. As part of this requirement, the Commission should prohibit VHF/UHF stations from generating within their NTSC Grade A contours a DTV received field strength that exceeds the received field strength of their market's most powerful UHF/UHF DTV signal by more than 3 dB. In this way, the Commission will ensure reasonable competitive parity between VHF/UHF and UHF/UHF stations within their core market areas.

are of greater public interest concern than any service losses that would supposedly occur in the periphery of stations' Grade B contours if Sinclair's allotment proposal were adopted.^{7/}

Accordingly, the Commission should adjust its DTV Table of Allotments in whatever way necessary to replicate the current ease of reception within stations' core business areas, even if these modifications preclude the replication of all stations' Grade B contours as such replication is currently defined by the Commission.^{8/}

B. The Must-Carry Rules Are Irrelevant to Consideration of the DTV Power Disparity

In its Opposition, MAP defends the Commission's core channel policy against the arguments of some UHF/UHF broadcasters by asserting that "whatever disparity still remains between UHF and VHF stations has been greatly reduced by mandatory cable carriage." MAP

^{7/} Sinclair believes that, in the real world, the necessary changes to the DTV allotment table would not prevent VHF/UHF stations from achieving Grade B replication. Even with reduced VHF/UHF power levels, anyone at the perimeter of those stations' NTSC Grade B contours could reliably and consistently receive DTV service through the use of antenna-mounted preamplifiers. The use of these preamplifiers would have the same effect as multiplying stations' power levels by a factor of greater than two. In contrast, for urban viewers with simple indoor antennas who are unable to receive DTV programming from UHF/UHF stations, there is no analogous technological solution. Without the necessary adjustments to the initial DTV allotment table, these consumers will be left without a full array of programming options.

^{8/} According to Pulitzer, Sinclair's proposed reallocation would "introduc[e] significant delays, requir[e] extensive Commission resources, and likely creat[e] yet another set of objections leading to additional reconsideration petition and conflict among licensees." Pulitzer Opposition at 2. Counter to Pulitzer's assertion, the Commission's most efficient policy alternative is to expeditiously incorporate into the DTV allotment table all modifications necessary to achieve replication of stations' current ease of reception within their Grade A contours. If these changes are not made now, it is certain that UHF/UHF stations will aggressively utilize the Commission's maximization procedures in an effort to achieve this result. In such a scenario, there would likely be innumerable adversarial proceedings concerning interference questions and other upgrade issues. These proceedings would substantially delay the implementation of DTV, and would drain the Commission's resources much more severely than a comprehensive reallocation at this early stage.

Opposition at 3. In doing so, MAP implies that the DTV power gap between VHF/UHF stations and UHF/UHF stations will be rendered irrelevant by the Commission's must-carry rules.

Counter to MAP's claim, however, the Commission cannot rely on its must-carry rules to ameliorate the effects of the VHF-UHF power disparity.^{9/} The Commission has not even determined whether the Commission's must-carry rules will apply to DTV programming. Moreover, even if the Commission makes its must-carry rules applicable to DTV, the Commission should design its allotment table in a manner that will protect the significant percentage of television viewers who do not subscribe to cable service. These non-subscribing consumers should be ensured access to the full array of broadcast programming options.

II. The Commission Should Reject Parties' Opposition to Sinclair's Less Stringent Interference Standard for Station Maximization

MSTV and APTS argue that the Commission should not adopt Sinclair's proposal that, in the event the Commission's initial DTV allotment table is left unchanged, the Commission modify its definition of "additional interference" in areas falling outside stations' Grade A contours by moving to a F(50,50) based D/U ratio in those areas. The Commission should reject the arguments of these parties, and incorporate this new interference standard into its maximization procedures.

^{9/} As stated above, Sinclair believes that the Commission should focus exclusively on conditions in the broadcast market as it evaluates the relative competitiveness of VHF/UHF and UHF/UHF stations. At the same time, Sinclair recognizes that it is not easy to formulate a fair and appropriate definition of the relevant video market. The difficulty of this challenge is highlighted by the difference between MAP's analysis in the current context, where it argues that the Commission should account for cable carriage in its evaluation of UHF/UHF DTV coverage, and MAP's argument in the TV duopoly rulemaking, where it maintained that the Commission should disregard the existence of local cable systems in assessing the diversity of media voices in a market. See Comments of Media Access Project, et al., MM Docket 91-221, dated February 7, 1997, at 22-23.

A. MSTV Again Fails to Address the UHF/UHF Reception Problem

According to MSTV's technical analysis, almost two million viewers in the periphery of stations' Grade B contours would lose acceptable NTSC service if the Commission adopted Sinclair's proposed Grade B interference standard. In its view, "the loss of service would . . . outweigh the benefits conferred on licensees permitted to increase power," and, as a result, MSTV opposes this standard.^{10/} MSTV Opposition at 16.

With this argument, MSTV again ignores the effect of the DTV power disparity on UHF/UHF stations and viewers in these stations' core market areas. As a result of this power gap, **many** millions of viewers around the country with indoor antennas will be unable to receive programming from UHF/UHF stations, compared to the less than two million viewers in the Grade B periphery who will lose acceptable service. Sinclair's proposed standard would make it easier for hundreds of UHF/UHF stations to increase their DTV power through the maximization process, giving them a much better chance of replicating their current ease of reception within their Grade A contours. With these upgrades, millions of these "disenfranchised" indoor antennas users could likely gain access to UHF/UHF programming. Consistent with the Commission's historic emphasis on ensuring quality service to cities of license and their surrounding core market areas, the Commission should adopt Sinclair's proposed interference standard.

^{10/} MSTV also argues that application of the F(50,50) standard within the Grade B periphery is inconsistent with the use of the F(50,10) standard at the Grade A contour. MSTV fails to support this argument with an engineering showing, however, and there is no reason to believe that this claim is a valid one.

B. Despite APTS' Concern, the Commission Should Expeditiously Adopt Sinclair's New Interference Standard


APTS asks the Commission to defer consideration of Sinclair's proposed interference standard pending the collection of sufficient field test data to evaluate the impact of this change. APTS Opposition at 2. The Commission should reject this argument. In the event the Commission does not modify its current DTV allotment table, UHF/UHF stations will have to move expeditiously to increase their power and improve the quality of their service in their core business areas. Sinclair's proposed F(50,50) based D/U ratio in areas outside stations' Grade A contours would greatly facilitate replication of current ease of receptions of these stations, a factor crucial to the economic viability of UHF/UHF stations. The more cautious wait-and-see approach espoused by APTS would be inappropriate in that scenario, given the urgency of these stations' upgrade efforts.

Conclusion

For the foregoing reasons, Sinclair urges the Commission to reject the arguments put forth by parties opposing Sinclair's Petition for Reconsideration, and to expeditiously grant Sinclair's Petition.

Respectfully submitted,

SINCLAIR BROADCAST GROUP, INC.

By: 

Martin R. Leader
Gregory L. Masters
Stephen J. Berman

Its Attorneys

FISHER WAYLAND COOPER
LEADER & ZARAGOZA L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Dated: July 31, 1997

CERTIFICATE OF SERVICE

I, Elinor McCormick, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that true copies of the foregoing **"CONSOLIDATED REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION"** were sent this 31st day of July, 1997, by first class United States Mail, postage prepaid, upon the following:

Victor Tawil
Senior Vice President
Association for Maximum
Service Television, Inc.
1776 Massachusetts Avenue, NW
Suite 310
Washington, DC 20036

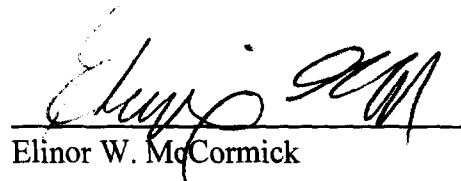
Joseph S. Paykel
Gigi B. Sohn
Andrew Jay Schwartzman
Media Access Project
1707 L Street, NW
Suite 400
Washington, DC 20036

Erwin G. Krasnow
Julian L. Shepard
Verner, Liipfert, Bernhard
McPherson and Hand Chartered
901 15th Street, NW
Suite 700
Washington, DC 20005

Theodore D. Frank
Arnold & Porter
555 12th Street, N.W.
Washington, DC 20004

Marilyn Mohrman-Gillis
Vice President, Policy and Legal Affairs
Lonna M. Thompson
Director, Legal Affairs
Association of America's Public
Television Stations
Suite 200
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036

Paula A. Jameson
Senior Vice President
General Counsel and Corporate Secretary
Gary P. Poon
Executive Director, DTV Strategic
Planning Office
Kris Rao
Assistant General Counsel
Public Broadcasting Service
1320 Braddock Place
Alexandria, VA 22314


Elinor W. McCormick